

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 28th day of May, 1996

Essential Air Service at:

KEENE, NEW HAMPSHIRE, AND
RUTLAND, VERMONT

**Docket 46291
46292**

under 49 U.S.C. 4173 *let seq.*

ORDER TENTATIVELY SELECTING CARRIER

SUMMARY

By this order we are tentatively reselecting Colgan Air, Inc., to provide subsidized essential air service at Keene, New Hampshire, and Rutland, Vermont, for the two-year period May 1, 1996, through April 30, 1998, at an annual rate of \$764,565.

BACKGROUND

Order 93-11-6 selected Colgan Air to provide subsidized essential air service to Keene, New Hampshire, and Rutland, Vermont, at annual subsidy rates of \$1,253,622 the first year and \$968,902 the second year. Colgan began subsidized service at Keene and Rutland in December 1993 when it replaced the incumbent carrier, Skymaster, which had provided unreliable service to the communities and then ceased service altogether on August 31, 1993. Colgan's rate was set to expire on December 31, 1995, but by Order 95-11-28, effective November 27, 1995, the Department reduced subsidy rates across the board in response to a one-third budget reduction for fiscal year 1996. Order 95-11-28 reduced Colgan's subsidy-eligible service to ten round trips a week and modified its level of subsidy to \$624,404. Order 96-2-43 extended that rate as a final rate effective January 1, 1996, until further Department action.

Under our normal procedures when nearing the end of a rate term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. If the carrier wishes to continue service with subsidy, we usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting the carrier for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order; if

any such proposals are filed, we process them as a competitive case. Consistent with this practice, we invited Colgan to submit a proposal for continuation of essential air service at Keene and Rutland.

CARRIER SERVICE PROPOSAL

In response to our inquiry Colgan indicated its desire to continue to serve Keene and Rutland and submitted and negotiated a renewal proposal for a two-year rate term.

(See Appendix B to this order for a summary of the subsidy computation for Colgan's proposal.) The carrier proposes to provide ten round trips per week routed Rutland-Keene-Newark. All service is to be provided with 19-seat Beech 1900 aircraft. Based

on informal rate discussions held between the carrier and the Department staff, an annual subsidy rate of \$764,565 has been agreed upon for each year of the new rate term.

TENTATIVE RESELECTION

We will tentatively reselect Colgan to provide essential air service at Keene and Rutland as detailed in Appendix B, for an additional two-year period through April 30, 1998, for an annual subsidy of \$764,565. We note, however, that Keene is within 70 miles of Manchester, New Hampshire, and Rutland is within 70 miles of Burlington, both of which are small hubs. Under the Administration's FY 1997 budget proposal, communities such as Keene and Rutland that are within 70 miles of small hubs would lose their subsidy eligibility.

Carriers interested in filing competing proposals, with or without subsidy requests, should file them within the 20-day period set for objections. At the end of that period, our staff will docket any competing proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. We will give full consideration to all proposals that are timely filed. As a general matter, we request proposals that would provide ten nonstop or one-stop round trips each week between Keene and Rutland and a suitable hub with twin-engine aircraft operated by two pilots.

SERVICE HISTORY AND TRAFFIC DATA

Colgan Air has served Keene and Rutland since December 1993, when it replaced Skymaster, a small carrier that had ceased operations entirely on August 31, 1993. Keene and Rutland's traffic had responded favorably to Colgan's service, but Keene's traffic has recently decreased, apparently due to service cutbacks implemented by Colgan in response to the Department's reduction in subsidy. Appendix D shows traffic history at Keene and Rutland since Colgan initiated service.

OBJECTIONS OR PROPOSALS

As usual, we will allow interested parties 20 days to object to our decision and/or to file competing proposals. If no timely objections or competing proposals are filed this order will automatically become final. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague, or unsupported objections. Carriers submitting competing proposals should limit their proposals to ten round trips per week at these communities.

PROCEDURES FOR FILING PROPOSALS

For interested air carriers that are not familiar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f) (formerly section 419 of the Federal Aviation Act) and discusses in detail the process of seeking proposals, conducting financial and operational audits of the applicant carriers and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, and a copy of section 14 CFR 204.4 of the Department's regulations which deals with the information required of all applicants for authority to provide basic essential air service, and provides schedules giving our recommended form for submitting data required for determining the financial and operational ability of applicants to provide dependable air service.

COMMUNITY AND STATE COMMENTS

¹ Copies of these documents can be obtained from: EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street, S.W., Washington, DC 20590. Telephone requests for these documents are accepted at (202) 366-1053.

If we receive competing proposals the communities and States are welcome to submit comments on the proposals at any time.² Early in the proceeding, comments on the perceived strengths and weaknesses of the proposals would be particularly helpful to the Department, although the civic parties may also express a preference for a particular carrier or proposal option at that time, if they choose. In any event, after we conclude rate conferences with all applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.³

² Civic parties should file an original and five copies of their comments in Dockets 46291 & 46292. This filing should be addressed to: Documentary Services Division, Docket Section, C-55.1, Office of the Secretary, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, S.W., Washington D.C. 20590.

³ In cases where a carrier proposes to provide full essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service.

OTHER CARRIER REQUIREMENTS

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination⁴. Consequently, all carriers receiving Federal subsidy to support essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

CARRIER FITNESS

49 U.S.C. 41738 requires that we find a carrier fit, willing, and able to provide service before we pay it compensation for essential air service. In that regard, Colgan has operated successfully for a number of years. The carrier's fitness was last reviewed in August 1994 in conjunction with its selection to serve Bar Harbor and Rockland, Maine. Colgan remains subject to the Department's continuing fitness monitoring. Since no information has come to our attention that would lead us to question the fitness of Colgan we conclude that the carrier remains fit to conduct the operations proposed here.

This order is issued under authority delegated in 49 CFR 1.56(i).

ACCORDINGLY,

1. The Department tentatively reselects Colgan Air, Inc., to provide essential air service at Keene, New Hampshire, and Rutland, Vermont, for the two-year period from May 1996, through April 30, 1998;
2. The Department tentatively sets the final rate of compensation for Colgan Air, Inc., for the provision of essential air service at Keene, New Hampshire, and Rutland, Vermont, for the two-year period from May 1, 1996, through April 30, 1998, at \$764,565 per year, as described in Appendix C, payable as follows: for each calendar month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceilings and shall be determined by multiplying the subsidy-eligible departures from and arrivals at the hub completed during the month by;
3. In the event objections or competing proposals are received, the rate in ordering paragraph (2) above will be effective as a final rate from May 1, 1996, until further Department action;

⁴ The regulations applicable to each of these areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, Implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants) implementing the Drug-Free Workplace Act of 1988; (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs for the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the basis for Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the Basis of Handicap in Air Travel.

⁵ See Appendix C for calculations.

4. If the Government terminates all payments provided for under this order, as it may be amended from time to time, then, at the end of the period for which the Government does make payments, the carrier may cease to provide any of the service provided for under this order without regard to any requirement for notice of such cessation. Payment of a lesser amount of subsidy that is accompanied by a lower level of service shall not constitute termination of subsidy because carriers are paid proportionately with the amount of service they provide. No legal liability on the part of the Government may arise for the termination/reduction of payments under this agreement/order;

5. We find that Colgan Air, Inc., continues to be fit, willing, and able to operate as a certificated air carrier and is capable of providing reliable air service at Keene, New Hampshire, and Rutland, Vermont;

6. We direct Colgan Air, Inc., to retain all books, records, and other source and summary documentation to support claims for payment and to preserve and maintain such documentation in a manner that readily permits the audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order; and

7. The Department will serve copies of this order on the Governor of New Hampshire, the Governor of Vermont, the Mayors and Airport Managers of Keene, New Hampshire, and Rutland, Vermont, Colgan Airways, and the carriers listed in Appendix E.

By:

Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs

(SEAL)

**Colgan Air, Inc., Essential Air Service to be Provided to Keene, New Hampshire,
and Rutland, Vermont, Dockets 46291 and 46292**

Effective Period May 1, 1996, through April 30, 1998

Scheduled Service Rutland - New York (Newark), nonstop or one-stop.
Keene - New York (Newark), nonstop or one-stop.

Aircraft: Beech 1900, 19-seats.

Rate per Departure/Arrival for each point to/from New York \$378.87¹

Weekly Compensation Ceiling, Keene² \$7,577.40³

Weekly Compensation Ceiling, Rutland³ \$7,577.40³

Note: the carrier has been placed on notice that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of this order, including the service plan outlined above and any other significant elements of the required service, without prior approval. In addition, if for a significant period of time the carrier either does not schedule or operate its flights in full conformance with this order, the carrier may jeopardize its entire subsidy claim for the period in question. If any such changes are contemplated during the applicable period of this rate, the carrier must first notify the Office of Aviation Analysis in writing and receive approval from the Department of Transportation to be assured of full compensation. Carriers must complete all flights that can be safely operated. An aircraft taking-off and landing at its scheduled destination constitutes a completed flight. Only completed flights are considered eligible for subsidy absent an explanation for not completing the flight (such as certain weather cancellations). Flights which overfly subsidized points for lack of traffic will not be compensated.

¹ \$764,565 annual compensation, divided by 832 annual departures from and arrival at Fairbanks that can be ascribed to each community, calculated as follows:

Keene: 20 departures/arrivals per week x 52 weeks x .97 completion = 1,009

Rutland: 20 departures/arrivals per week x 52 weeks x .97 completion = 1,009
2,018

² Calendar weeks that fall into separate calendar months will be treated as part of the later month for the purpose of calculating both calendar weeks per month and the monthly compensation.

³ 20 departures/arrivals between each point per week and New York x \$378.87